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THE BAR AND THE UNWRITTEN LAW.

Whatever may be meant by the very indefinite appellation, "the unwritten law," we are convinced that courts and lawyers have no business fooling with it. The law which courts and lawyers are sworn to enforce is every bit of it *written*, either in the statutes passed by competent legislative bodies, the decisions of courts of last resort or the maxims stated and defined by jurists of antiquity and accredited by the decisions of the courts and the treatises of great text-writers of jurisprudence. What is more than these "is of the evil one" as far as the profession of the law is concerned, and a judge or lawyer who gives the influence of his official position to the circulation of the abominable error involved in the term "unwritten law" casts a reflection on the administration of justice which he is expected and sworn to uphold.

These remarks have been provoked by the following editorial which appeared recently in the St. Louis Post-Dispatch:

"In the city of Alton, Ill., the other day the city attorney grandiloquently refused to prosecute a man arrested for assault and the presiding judge, not to be out-done, fined the prisoner the minimum amount, paid it himself and informed the plaintiff that Judge Lynch should sit in his case. The merits of this controversy are not important, for whatever they may have been they cannot change the law provided for just such emergencies. If there were extenuating circumstances favorable to the prisoner he was entitled to the benefit of them. They might palliate and they might even excuse his offense, but under no conceivable conditions was a judge justified in advising mob law or the prosecutor in his spectacular assertion that 'in the country where I came from this would have been a case not for the police court, but for the coroner.' It makes no difference where either the judge or the prosecutor came from. They are now officers of a civilized state, charged with the enforcement of written law. If their admiration of savagery is so pronounced that they cannot uphold the system which has honored them and which trusts them they should in decency retire from office."

This scathing criticism of bench and bar is quite justifiable in this particular instance and handled with a conservatism which is hardly expected from a lay publication. As this editorial properly suggests it makes absolutely no difference what the facts were or are in any particular case. If the law of the state makes an act a crime and this act is proven to the satisfaction of the court, so that there is no alternative but to impose a fine, the action of the court in immediately paying the fine itself and praising the convicted criminal at the bar is an effrontery to the law of the state and a reflection on the justice administered by the courts of that state. If our laws as now constituted and administered do not work out justice it is for the people to change them, not for the court to denounce them or make a mockery of them.

There is a growing tendency among trial court judges to refuse to uphold certain laws on the statute books or laid down by the decisions of superior courts whenever for any reason, they do not approve of the policy of such laws. Thus, we knew a judge who always refused to grant divorces on certain grounds recognized by the statute because to do so did not comport with his ideas as to the sanctity of the marriage relation; and we also knew a judge who stated in open court that no matter what the law was or how many supreme judges held otherwise he would on *habeas corpus* by a father against the mother for the custody of their children, invariably and always give them to the mother. Such reflections on the law by a trial court inevitably tend to bring the law into contempt and to encourage its violation. If a judge's views of justice are not in harmony with the law of his state, he is not at all excusable for the apparent hypocracy involved in taking the oath of office whereby he swears to uphold the laws of his state while at the same time he is secretly cherishing the thought that at the first opportunity he will show his contempt for those particular laws against which he has been so continually prejudiced.

So also the lawyer, a member of that profession which, in this country at least, the peo-

ple have always honored and trusted as the faithful custodian of the laws, is recreant to his trust whenever he drags the law in the dust of public contempt. No matter what may be the cause the lawyer may happen to represent it should not be more important than law itself with whose enforcement he is charged and to which he so often has occasion to appeal. Thus in the otherwise great speech of Clarence Darrow at the Haywood trial, this splendid lawyer so far forgot himself as on several occasions during the heat of the argument to attack the laws of the land and their proper administration and to plead for a system of laws, upheld by a sect of publicists known as socialists, which has not yet been accepted by the people and which is at war with many of our present institutions. This attack was especially out of place when this same attorney's client was appealing to the law he so roundly denounced to save him from the hangman's noose.

We feel it our present duty to make these observations at this time and clear the skirts of our profession from the opprobrium which might attach to it if it were generally believed that the silence of the profession with reference to the instances of disregard of law and precedent on the part of the courts and lawyers of the kind just adverted to, might give implied consent to such extreme violations of professional duty and obligation. As for the unwritten law, it is on a par with any other covert attack on the proper administration of the law and is unworthy of any lawyer's notice.

NOTES OF IMPORTANT DECISIONS.

WITNESSES—COMPETENCY OF WITNESS TO TESTIFY CONCERNING TRANSACTION WITH DECEASED PARTY UNDER FEDERAL PROCEDURE.—No rule is more deeply rooted in the law of procedure than that when the mouth of one party to a contract or transaction is closed by death the mouth of the other party will be closed by the stern fiat of the law. This rule is founded on ages of human experience, and therefore, when any court by supercilious or careless construction of a statute fails to recognize this very important principle we feel called upon to enter our most vigorous protest.

The recent case which has thus provoked us to "good works," so to speak, is that of Miller v. Steele, 153 Fed. Rep. 714, where it was held that in a suit in the federal court against a legatee on a contract for services rendered testator in his lifetime, whether plaintiff was a competent witness should be determined by the federal law, and not by the law of the state where the suit was brought, or the law of the state where the services were performed. The court held further that Rev. Stat. U. S., § 858, declaring that no witness shall be excluded because of interest, except that in actions by or against executors, administrators, or guardians neither party shall be allowed to testify against the other as to any transaction with or statement by testator, intestate, or ward, unless called to testify thereto by the opposite party, did not incapacitate plaintiff to testify in an action against a legatee for services rendered testator, under a contract to pay her $25,000 by a provision made during his lifetime or in his will. The court said: "As is seen, this statute makes a party to the suit competent to testify unless the other party is an executor, administrator, or guardian. The courts have no authority to add others to the exception; nor can this be done by state legislation. White v. Wansey, 116 Fed. Rep. 345, 53 C. C. A. 634; Smith v. Township of Au Gres, U. S. C. C. of App., 150 Fed. Rep. 257; Hobbs v. McLean, 117 U. S. 567, 579, 6 Sup. Ct. Rep. 870, 29 L. Ed. 940."

We believe this to be a most narrow and illiberal construction. Even though a strictly literal construction of this statute might be admitted to justify the result at which the court arrived it should have at least hesitated in reaching a result so opposed to experience and common sense. The court might also have presumed that congress had no intention of upsetting a rule of procedure so firmly fixed in our jurisprudence and in its place to have adopted a rule which encourages perjury and the preferment of fraudulent claims against estates of deceased persons. Some courts, which do not think as deeply on such questions as they might, and which regard all rules of procedure as somewhat arbitrary and technical, have shown a tendency to fret under the restraint of the rule which prevents a claimant or party to a transaction or contract from testifying in his own favor when the mouth of the other party is closed by death, and remarks have been made from the bench which evidenced a prejudice against the rule and a sympathy for the "unfortunate" litigant whose contract or transaction with the deceased was in such unsatisfactory shape as not to be proven without his own testimony. Such courts fail to see what other courts and legislatures have had in mind, to-wit, that parties defending an estate are entitled to even greater consideration, since often they are at a tremendous disadvantage in resisting claims against their decedent, not being familiar with his business transactions nor with the evidence necessary to prove or disprove their binding force; and, but for this rule, many a fraudulent claim would be presented against the estates of deceased persons and proven by per-

jured testimony, or by the biased and prejudiced testimony of claimants whose transaction with decedents may, as in the principal case, have been of such a nature as not likely to have been disclosed to others and thus not be subject to denial or correction by him who alone can deny or correct them.

The federal act regulating this character of testimony which under the construction put upon it by the federal court works such rank injustice is as follows: "In the courts of the United States no witness shall be excluded in any action on account of color or in any civil action because he is a party to or interested in the issue tried: Provided that in actions by or against executors, administrators or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transaction with or statement by the testator, intestate or ward unless called to testify thereto by the opposite party or required to testify thereto by the court. In all other respects the laws of the state in which the court is held shall be the rules of the decision as to the competency of witnesses in the courts of the United States in trials at common law and in equity and admiralty."

Congress, in passing this act, left out, we believe quite unintentionally, one very important party defendant, entitled to the protection of such a statute, to-wit, a legatee or a devisee. For in some states there is no statute of non-claim or period of limitation during which all claims must be presented to the administrator or be forever barred, but, as in New York, where the cause of action in the principal case arose, some states permit an action against a surviving wife or husband or against a legatee, devisee or next of kin on a claim against the decedent. Under such circumstances, it is only necessary for claimants unable to substantiate their claims in New York courts under the rule denying the competency of claimant to testify in his own favor, to delay action until after administration is closed and then bring suit in a federal court against some non-resident legatee or assign his claim to some non-resident for that purpose and then be permitted to prove it in a manner contrary to the policy of the state where the cause of action arose and in defiance of common decency and a proper respect for a rule of procedure deeply grounded in the wisdom and experience of centuries.

We do not believe that congress ever intended to so narrowly limit the operation of the statute referred to nor so ruthlessly to assist in the evasion of a salutary state law of procedure; and to so construe this particular statute is to warrant a practical usurpation on the part of the federal courts over the power of the states to regulate matters of procedure and a reversal of the hitherto unbroken policy of the federal courts to adopt the local rules relating to procedure, a policy which if generally disregarded would throw the whole administration of justice of this country into confusion. The last clause of this act, evidences the recognition of congress of this great fact; and, to our mind discloses the intention to extend the application of the proviso in this act to cases such as arose in the principal case.

If, however, this construction is to be adhered to congress should be appealed to to amend this statute so as to conform it to the policies of the states. The New York Law Journal in commenting on the situation created by this construction of the act here referred to, says: "Under the restricted phraseology of the federal statute and the literal interpretation of it this case leads to an anomalous result. There is no good reason why a distinction should be made between a suit against an executor and one against a legatee where the cause of action arose out of alleged transactions with the decedent." The absurdity of the situation, involved in the decision in the principal case, is that as between executor and legatee, the latter stands in greate need of protection as being further removed from acquaintance with his testator's business affairs and thus less able to resist a fraudulent claim against the estate.

CORPORATIONS AND THE COMMERCE CLAUSE.

The relation of corporations as instrumentalities to effectuate commerce between states; the source of the authority to create such corporations, and the relation thereof to the power of congress to exclusively regulate such commerce, have prompted me to inquire, whether, in view of certain conditions pertaining to commerce between states, they, the states, should be divested of the power to create such corporations as may engage in interstate commerce, and whether it lies within the scope of constitutional authority for congress to so enact, or to regulate the creation thereof by a federal license plan?

The inquiry upon which we enter invites consideration of the following propositions: 1. What is the extent of the authority of congress, if any, to create corporations? 2. The power of congress to deny to the states the creation of corporations that shall engage in interstate commerce, or to prescribe that the right of state created corporations to engage in such commerce, is to be dependent upon a federal license. 3. The results to be obtained by the adoption of either a federal incorporation or federal license plan, for such corporations.

As to the Authority of Congress to Create Corporations and the Extent of that Authority.—This inquiry will be prosecuted no farther than pertains to the subject of interstate commerce; yet it is apparent that if the authority is sustained as a proper exercise of federal legislative power, in connection with one subject of federal jurisdiction, the same argument should sustain it as to other subjects of the same jurisdiction, or for the accomplishment of which a corporation might be shown to be a proper instrumentality.

The constitution of the United States provides in section 8, of article 1, of that instrument, that "the congress shall have power * * * to regulate commerce with foreign nations, and among the several states, and with the Indian tribes, etc.," and "congress shall have power * * * to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any depar ment or officer thereof." These clauses thus invest congress with the power to regulate commerce, other than that which may be described as domestic or interstate, and with the legislative authority to carry such delegated power into execution.

Is the creation of a corporation as a means for carrying out an express federal power, a proper exercise of legislative authority? It would be sufficient for the purpose of this paper to rest the proposition upon the reasoning of Chief Justice Marshall in McCulloch v. Maryland.[1] This justly celebrated case was decided by the Supreme Court of the United States at the February term, 1819. That opinion enunciates that the constitution does not profess to enumerate the means by which the powers it confers may be executed; nor does it prohibit the creation of a corporation, if the existence of such a being be essential to the beneficial exercise of those powers. If the creation of a corporation appertains to sovereignty it pertains to the sovereignty of the union as well as those of the states. They are each sovereign with respect to the objects committed to them, and neither sovereign with respect to the objects committed to the other. The corporation being found to be a proper means, essential or helpful in carrying out this express power, it is comprehended as one of the subjects of legislation embraced in the legislative program, that congress may make all laws which shall be necessary and proper for carrying into execution the foregoing powers. The chief justice further contends that this provision was made in a constitution intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs. "To have prescribed the means by which government should in all future times execute its powers would have been to change entirely the character of the instrument, and give it the properties of a legal code."

When the constitution of the United States was framed the business of the country was generally done by natural persons. Of moneyed corporations, such as now control so much of it, there were at the close of 1787 less than thirty. Nine were incorporated by Massachusetts, one by New York, four by Pennsylvana, two by Maryland, six by Virginia, and three by South Carolina.[2] The subject of corporations was before the convention which framed that instrument. In the case of Paul v. Virginia,[3] Justice Field said that, "the power conferred upon congress to regulate commerce includes as well commerce carried on by corporations as commerce carried on by individuals. At the time of the formation of the constitution a large part of the commerce of the world was carried on by corporations. The East India Co., the Hudson Bay Co., the Hamburg Co.. the Levant Co., and the Virginia Co., may be named among the many corporations then in existence which acquired from the extent of their policy celebrity throughout the commercial world. This state of facts forbids the supposition that it was intended in the grant of power to congress to exclude from its control commerce of corporations. The language of the grant makes no reference to the instrumentalities by which commerce may be carried on; it is general and includes alike commerce by individuals, partnerships, associations and corporations."

Also, in providing as to the parties over whom the jurisdiction of the courts of the United States should extend, the convention

[1] 4 Wheat. 316.

[2] From "2 Centuries Growth of American Law"

[3] 75 U. S. 168.

refused to give any particular attention to private corporations. It had rejected by a vote of eight states to three a motion made by Madison to insert in the constitution a grant of power to congress to create corporations for certain purposes, preferring to have it embraced within the general section which included the power to make all necessary laws.[4] There existed a general popular jealousy of such a mode of combining capital and concentrating power that the states had refused to charter but the few existing at that time.

A recent author who referred as opposing the view that congress had the power to create corporations, includes within his denial of such authority both interstate carriers as well as trading companies, but with the qualifying statement, that "if any such power exists it is of very recent origin."[5] A few enactments of congress creating corporations, as interstate carriers, should be sufficient to establish the long acquiescence in federal authority so to do.[6]

As incident to the consideration of corporations by congress, and the powers possessed by congress to delegate to them its right of eminent domain, it may be said that in 1875, Hon. E. W. Kitridge, long a leading member of the Cincinnati bar, contended in the Supreme Court of the United States that no act of congress had been passed for the exercise of the right of eminent domain, and urged that in taking real estate for federal purposes resort would have to be had by the general government to private purchase or by appropriation under the authority of state laws in state tribunals. The answer of that court was that the power was as inseparable from the federal government as from the state government. That it was the offspring of political necessity, and could be used in the same manner by the general government, over the subjects committed to it as by the state over the subjects to which its sovereignty extends.[7] This would include the right to delegate such power to a corporation the same as might be done by appropriate legislation by the general assemblies of the states.

There is no longer any room for contention but that congress has the power to create corporations as interstate carriers. That proposition could be maintained without recourse to the commerce clause which we are alone considering.

As to Mercantile or Trading Corporations.—In the history of the establishment of federal power to incorporate governmental agencies, it has been claimed that the advocates of the national system for the organization of private mercantile corporations find no assistance. It may be conceded that congress has no power to create a manufacturing corporation which does not engage in interstate commerce. Manufactory, in and of itself, is local and not interstate. The transportation of manufactured articles becomes commerce the same as the transportation of natural products may become commerce. The proceedings of the convention in which the constitution was framed clearly indicate the purpose to vest in the federal government full control, not merely over traffic, but over all inter-communication between the colonies themselves, or either of them, and the outside world. The power which each constituent state had over its external commercial relations passed thereby to the federal government. Madison held that the purpose was "to empower congress to legislate in all cases to which the separate states are incompetent or, in which the harmony of the United States may be interrupted by the exercise of individual legislation."[8] This power was yielded by the states and vested in the general government, and was the power of each constituent state over its external relations. It was commerce itself which had the supreme consideration of the convention. The means or method employed for carrying commerce, and the instrumentalities and forms of organization by which commerce should be carried on, were merely

[4] Elliott's Debates, vol. 5, pp. 440, 543.

[5] Prentice's Power Over Carriers and Corporations.

[6] The act of March 3, 1829, by which was incorporated the Washington, Alexandria and Georgetown Steam Packet Company. The act of March 2, 1870, by which was incorporated the Washington Mail Steamboat Company to run a line of steamers between Washington and Norfolk and other ports. The act of May 14, 1870, by which was incorporated the Washington and Boston Steamship Company. The acts of July 2, 1864, May 7, 1866, and July 1, 1868, provided for the organization of the Northern Pacific Railway Company. The Union Pacific Railway Company was organized under the acts of July 1, 1862, July 2, 1864, and March 3, 1865. The Atlantic and Pacific Railroad Company by the act of July 27, 1866. The Texas and Pacific Railway Company by the act of March 3, 1871.

[7] Kohl v. U. S., 91 U. S. 367

[8] 2 Madison's Papers, 859

incidental to the consideration of the main proposition which was incorporated in section 8, of article 1.

While both commerce and the postal service including postoffices and postroads, are placed within the power of congress, and while a federal corporation engaged as an interstate carrier can be sustained upon added grounds to those upon which we would sustain mercantile corporations engaged in interstate commerce under federal incorporation, yet the argument is none the less forceful to support the latter corporation as distinguished from the former. The opinion in McCulloch v. Maryland is of striking emphasis when applied to the question of the power of congress to create interstate trading corporations. When, as in the foregoing language quoted, it becomes apparent that a corporation is a proper means of instrumentality to aid or carry out interstate commerce, the power to so create the same by proper legislation is plainly conferred. The well-known canon of Marshall is here appropriate: "Let the thing be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."[9] The following language from the same opinion would seem to exclude all doubt regarding the question: "That a corporation must be considered as a means not less usual, not of higher dignity, nor more requiring a particular specification, than other means, has been sufficiently proved. If we look to the origin of corporations, to the manner in which they have been framed in that government from which we have derived most of our legal principles and ideas, or to the uses to which they have been applied, we find no reason to suppose that a constitution, omitting, and wisely omitting to enumerate all the means for carrying into execution the great powers vested in government, ought to have specified this. Had it been intended to grant this power as one which should be distinct and independent, to be exercised in any case whatever, it would have found a place among the enumerated powers of the government. But being considered merely as a means to be employed only for the purpose of carrying into execution the given powers, there could be no motive for particularly mentioning it."

The report of the house committee to whom was assigned this subject in the first session of the 59th congress, sustained this power in report No. 2491 in the following language: "Corporations are created by the sovereign, whether the sovereign be the United States or a state. In this regard the power of congress is limited, while the power of the state is unlimited. Whenever, under the constitution, congress can exercise a power, congress can create a corporation to carry that power into execution; and to the exclusion of the states create corporations in the District of Columbia and all territory of the United States, and in all countries subject to the jurisdiction of the United States. Otherwise, all corporations * * * are created by the states under the reserve power of the states. At common law all public corporations are subject to the visitorial power of the legislature, and all private corporations are subject to the visitorial power of the courts. Congress has no visitorial over corporations created by a state." If this be an accurate presentation of the law upon this question, and many eminent lawyers were members of this committee, it further sustains the position that as to all powers committed to congress, to which a corporation might be a necessary or proper instrumentality or agency to carry that power into execution, it lies within the constitutional authority of congress to create the same.

In the creation of the bureau of corporations, congress recognized its right to create a commissioner with authority to investigate the organization, conduct and management of the business of any corporation engaged in commerce among the several states, reserving from the jurisdiction of the commissioner all common carriers, for the reason that they were embraced in the interstate commerce act of February 4, 1887. Equal power is conferred upon the commissioner of corporations with regard to private corporations engaged in interstate commerce as is conferred upon the interstate commerce commission with regard to common carriers. This evidences the view of congress, at least in part, regarding

[9] 4 Wheat. 347; Tucker on the Constitution of the United States, 1, 361, 367; Legal Tender Cases, 16 Wall. 36; Thorp on Constitution of the United States, 11, 487; Miller on Constitution of United States, 143, 144, 231. Note.

its power over corporations created by states and engaged in commerce between the states. Its right to investigate into the "organization, conduct and management of any corporation," savors very strongly of visitorial powers. The bureau and commissioner of corporations have no power under this act to regulate such corporations, but their authority seems to be limited to that of gathering "such information and data as will enable the President of the United States to make recommendations to congress for legislation for the regulation of such commerce." These powers should be enlarged, as hereafter shown.

Has Congress Power to Deny to the States the Creation of Corporations that Shall Engage in Interstate Commerce or to Prescribe that such Corporations, if Created by the States, Must Comply with the Requisites of a Federal License System?—If the proposition be successfully maintained that congress has the right to incorporate companies to engage in interstate commerce, it would seem to follow as a necessary corollary that it has the authority, if desired, to prohibit the states from doing so. There is no division of authority between the states "to regulate commerce." Such authority is vested in congress alone. It does not permit the states to enact legislation that will in any degree hinder, interfere with or destroy such commerce. Hamilton's view was that the government of the Union is empowered to pass all laws, and to make all regulations which have relation to the objects committed to its charge. This must be true if the constitution in the language of Marshall "be not a splendid bauble."

The exclusiveness of the jurisdiction of congress over interstate commerce is most strongly set forth in Gibbons v. Ogden.[10] This has justly been considered to be one of the greatest of Marshall's opinions. The arguments presented were by the foremost lawyers of the country. Daniel Webster and attorney general William Wirt appeared for the appellant, Thomas J. Oakley, and Robert Emmett appeared for the respondent. The question involved was the constitutionality of an act of the general assembly of New York giving to Messrs. Livingston and Fulton and their assigns the exclusive right for a term of years to navigate the waters of that state by steamboats. In Webster's argument the following propositions were announced and sustained by the opinion of the learned chief justice: "Some powers are holden to be exclusive in congress, from the use of exclusive words in the grant, others, from the prohibition of the states to exercise similar powers; and others, again, from the nature of the powers themselves. It has been by this mode of reasoning that the court has adjudicated on many important questions, and the same mode is proper here. And as some powers have been holden exclusive, and others not so, under the same form of expression, from the nature of the different powers respectively; so, where the power, on any one subject is given in general words, like the powers to regulate commerce, the true method of construction would be, to consider of what parts the grant is composed, and which of those, from the nature of the thing, ought to be considered exclusive." The power of commercial regulation, it was held, as a whole, incapable of division, and therefore exclusive of a like power in co-ordinate sovereignty. In the body of the opinion the chief justice used the following language: "It has been contended by the counsel for the appellant, that as the word to 'regulate' implies in its nature, full power over the thing to be regulated, it excludes, necessarily, the action of all others that would perform the same operation on the same thing. That regulation is designed for the entire result, applying to those parts which remain as they were as well as to those which are altered. It produces a uniform whole, which is as much disturbed and deranged by changing what the regulating power designs to leave untouched, as that on which it has operated. There is great force in this argument, and the court is not satisfied that it has been refuted."

The argument of Webster, the opinion of the chief justice and the concurring opinion of Justice Johnson all emphasize that the power to regulate commerce implies in its nature full and exclusive power thereover and excludes the action of all other sovereignties, governments or persons that would attempt in any manner to regulate the same. The proposition plainly apparent is, that if necessary for the regulation of commerce, and to provide equal opportunities for all to engage

[10] 9 Wheat. 240.

therein, the power abides in congress to create corporations as instrumentalities therefor, and to deny to the states the right to create the same; and there is no constitutional reason why each and every state cannot be excluded from the creation of corporations of this nature the same as they could be excluded from in any manner regulating commerce between states.

As heretofore shown, when the government of the union was brought into existence it found a system existing, whereby, the thirteen sovereign states were engaged, under appropriate legislation, in creating corporations for various purposes. Among other purposes were mercantile and trading pursuits. These, as heretofore shown, were not limited in their sphere of operations to the respective states creating them, but carried on their pursuits, practices and commerce between the states and even with foreign nations. The failure of congress to adopt any measure looking toward a denial of the right in the states to create such corporations does not argue the inability or lack of authority in congress so to do. It has left this subject with the states permissibly, until it should think proper to interpose. This could not operate as an acknowledgment on the part of congress that a state may rightfully regulate commerce, or that it could continue to exercise the authority to create corporations to engage in a federal purpose after congress had denied the right similar to that announced by the Supreme so to do. It has left this subject with the states permissibly, until it should think proper to interpose. This could not operate as an acknowledgment on the part of congress that a state may rightfully regulate commerce, or that it could continue to exercise the authority to create corporations to engage in a federal purpose after congress had denied the right so to do. The power so exercised is very Court of the United States, of the power of the states to enact and enforce quarantine laws for the safety and protection of the health of their inhabitants.[11] In that case the court said: "The power exists (in the states) until congress has acted, to incidentally regulate by health and quarantine laws, even though interstate and foreign commerce is affected. When congress has acted the legislation thus provided for by the states becomes null and void."

There is as manifest inconsistency in leaving the power to create corporations, which may engage in interstate commerce, to be exercised by the states, as there would be in leaving to them the effective powers by which "the general defense" is to be provided for. To approach the proposition from another point of view, we have as an existing law upon the statute books of this state, statutes authorizing banks of issue, having authority to issue "bonds, notes and bills payable to bearer or payable to order" to circulate as money. Congress imposed a tax upon such circulation which left the power still unchallenged but made it unprofitable for banks of that character to any longer operate under such franchise. It drove from circulation all "wild cat" currency, and supplanted it with currency that can say, in the language of Colonel Igersoll, "I know that my redeemer liveth." Does any one deny the power or authority of congress to enact similar legislation with regard to "wild cat" corporations engaged in interstate commerce.

It has been urged, as it was urged in the case of the incorporation of the Bank of the United States that it was the intention of congress to leave the organization of trading or commercial companies exclusively with the state,[12] and that the fathers never intended that congress should have the power to create such companies. This would deprive the general government of using the corporation as an instrumentality in interstate commerce unless it left the creation thereof with the states, and thereby make the general government dependent upon the state government for the agency most beneficial to such commerce. It seems to me that the answer that Marshall has given to this proposition in McCulloch v. Maryland, in its essence and in its potentiality, must be regarded as the climax of pure reasoning. "To impose on it (the federal government) the necessity of resorting to means it could not control, which another government (the states) may furnish or withhold, would render its course precarious, the result of its measures uncertain, and create a dependency on other governments which might disappoint its most important designs and is

[11] Compagnie Francaise v. Board of Health, 186 U. S. 380.

[12] Prentice's Federal Power over Carriers and Corporations, p. 146.

incompatible with the language of the constitution." And further speaking of what he considered the view of the authors of the Federalist as to the supremacy of the general government, said: "Had the authors of those excellent essays been asked whether they contended for that construction of the constitution which would place within the reach of the state those measures which the government might adopt for the execution of its powers, no man who has read their instructive pages will hesitate to admit that their answer must have been in the negative."

The Results to be Obtained by the Adoption of Either a Federal Incorporation Act or Federal License Plan.—If the proposition as to the power of congress has been established the remainder becomes a mere question of expediency. This brings us to the consideration of corporate control of interstate commerce and the inability of the individual states to effectively regulate such corporations. Vices have grown up attendant upon such corporations, which are undoubtedly a burden upon commerce, and in the attempted regulation of these creatures of other state governments than our own state, we are met with the denial of right to forbid them to do business within our borders, because such right would be an interference with interstate commerce, which is beyond the jurisdiction of the state to control. They thus shield themselves under the commerce laws from the process of the state other than the one creating them, and override the boundaries of states with greater privileges than are conceded to domestic corporations.

The conspicuous features of the corporations of which I speak are these: overcapitalization, lack of publicity of operation, discrimination in prices to destroy competition, insufficient personal responsibility of officers who direct the corporate management, tendency to monopoly and lack of appreciation in their management of their true relations to the people for whose benefit they are permitted to exist.

Excessive capitalization is the greatest of these evils, it is the possibility of it that furnishes the temptations and opportunities for most of the others. Over capitalization does not necessarily mean large capitalization or capitalization adequate for the greatest undertaking. It is the imposition upon an undertaking of a liability without corresponding assets to represent it. Therefore, over capitalization is a fraud upon those who contribute the real capital, either originally or by purchase, and the efforts to realize dividends thereon from operations is a fraudulent imposition of a burden upon commerce in which they are engaged. When a property is capitalized at ten times its value and sold to the public, it is rational to suppose that its purchasers will exert every effort to keep its earnings up to the basis of its capitalization. The over capitalized securities entering into the general budget of the country are bought and sold, rise and fall, and they fluctuate between wider ranges, and are more sensitive in proportion as they are removed from real values, and are liable to be storm centers of financial disturbances of far reaching consequence. They also in the same proportion increase the temptation to mismanagement and manipulation by corporate administrators.

Corporations depending upon any statutory law for their existence or privileges, trading between the states, should thus be required by some federal system to do business in each state and locality upon precisely the same terms and conditions. There should be no discrimination in prices, in preferences or in service. Such corporations could be and should be compelled to keep the avenues of commerce free and open to all upon the same terms and to observe the law against stifling competition. Those corporations upon which the people depend for the necessaries of life should be required to conduct their business so as to regularly and reasonably supply the public needs. They could by such federal system be made subject to visitorial supervision and compelled to yield full and accurate information as to their operations. These should be made regularly at reasonable intervals, as now required of national banks. Secrecy in the conduct and results of operations being unfair to the minority or the non-managing stockholders, should be prohibited by law.

Senator Knox in his address before the Yale law class, June 25, sounded a prophetic note upon this subject. He said: "Abnormal conditions in commercial intercourse by monopolies, preferential service, rebates, and the like, destroy the normal operations of

commerce and create the demand for federal regulation to restore the rule of freedom and equality." This applies to the private corporations, and the power of congress over them, equally as forceful as to that of common carriers.

The recent case of Hale v. Henkel, decided at the October term, 1905, by the Supreme Court of the United States,[13] involved the power of congress to compel Hale to appear before the grand jury and give evidence in a federal court against the American Tobacco Company and others. He denied the power so to do, and asserted immunity on behalf of the corporation created by the state of New Jersey. The court said, by Mr. Justice Brown: "It is true that the corporation in this case was chartered under the laws of New Jersey, and that it receives its franchise from the legislature of that state; but such franchises, so far as they involve questions of interstate commerce, must also be exercised in subordination to the power of congress to regulate such commerce and in respect to this the general government may also assert a sovereign authority to ascertain whether such franchises have been exercised in a lawful manner, with a due regard to its own laws. Being subject to this dual sovereignty, the general government possesses the same right to see that its own laws are respected as the state would have with respect to the special franchises vested in it by the laws of the state. The powers of the general government in this particular in the vindication of its own laws, are the same as if the corporation had been created by an act of congress."

It is therefore apparent that this cry of unconstitutional centralization does not come from those who have read with unprejudiced minds the judicial history of their country. Congress by the adoption of such measures would not assume a power that has not been delegated to it, but by its failure to adopt some proper measure for incorporating companies engaged in interstate commerce, it has permitted the states to wield this national power against their sister states, to their detriment and the detriment of honest commerce between states.

SMITH W. BENNETT.

Columbus, Ohio.

[13] 201 U. S. 43.

CRIMINAL LAW—OTHER OFFENSES—EVIDENCE OF OFFENSE CHARGED.

YOUNG v. UNITED STATES.

Court of Appeals of Indian Territory. June 14, 1907.

Where two bunches of hogs were taken from the same range, driven to market at the same time in the same wagons by defendant and his cousin, and sold together to the same man at the same time, evidence of the stealing of a portion of the hogs at a different time was admissible in a prosecution for larceny of the others.

TOWNSEND, J.: (After stating the facts). Appellant has filed eight assignments of error, as follows: "(1) The court erred in admitting the evidence of Gen. Holden, a witness of the prosecution showing that the witness had lost 10 black hogs at a time three or four weeks prior to the time when the hogs for the larceny of which the defendant was on trial were stolen. (2) Because the court erred in admitting the evidence of Ben Holden, son of Gen. Holden, and also a witness for the prosecution, showing that his father had lost 10 black hogs four weeks prior to the time the hogs of George Logsden were alleged to have been stolen. (3) Because the court erred in admitting the evidence of Ben Holden, showing that at a time from two to four weeks prior to the loss of the Holden hogs, and from six to eight weeks prior to the alleged larceny for which the defendant was on trial, he (the witness) met the defendant in the woods with a gun near where his father's hogs ranged. (4) Because the court erred in admitting the evidence of Joe Dyer, a witness for the prosecution, showing that he bought 10 head of black hogs, answering the description of the hogs lost by the witness Gen. Holden. (5) Because the court erred in admitting the evidence of Joe Dyer, relative to a conversation between him and the witness Gen. Holden about the said black hogs when the defendant was not present. (6) Because the court erred in admitting the evidence of Joe Dyer, to the effect that the black hogs which he bought from Bill Young answered the description given about that time by the witness Gen. Holden. (7) Because the verdict is against the law and the evidence. (8) Because the court erred in overruling the defendant's motion for a new trial and in pronouncing judgment and sentence herein."

Assignment of error 1 to 6 all relate to the admissibility of certain evidence offered by the prosecution and allowed to go to the jury. The record shows that George Logsden, some time in July, 1904, moved from his place near Quinton, about seven miles, to Vireton, leaving one Teel to look after his hogs, six of which are alleged to have been taken by the defendant. About four weeks thereafter, on the 4th day of July, 1904, he went back to look for his hogs, but they were not to be found. The evidence further shows that Henry Young, appellant here, and Bill Young, a cousin or half-brother of Henry, had been living in a

camp in that neighborhood, but had moved from there four weeks prior to the alleged larceny, over near Joe Dyer's place. Dyer testified: "Some time in July, 1904, I bought some hogs from Bill Young. I met him one Sunday morning and engaged them from him. He told me that he had 10 head and could trade for some more. I directed him to deliver them to me at Quinton Wednesday following"—which was done. The government was allowed to prove, over the objection of defendant, that Gen. Holden, who lived 1 1-2 miles from Logdsen in the summer of 1904, had lost 10 head of black hogs three or four weeks prior to the time Logsden's hogs are alleged to have been stolen, and that the 6 hogs and the 10 hogs were taken together by Bill Young and the defendant to Joe Dyer and sold in one lot. The general rule is that "evidence of one distinct substantive offense is generally inadmissible on the trial of another" (Rapalje on Larceny, § 199), "but may be resorted to in some cases when it is necessary to prove a motive, and there is an apparent connection between the criminal act proposed to be proved and that charged, * * * where it is necessary to prove *scienter* and the like; * * * but evidence which tends directly to prove defendant's guilt of the offense charged is admissible although it may also tend to prove a distinct felony and thus prejudice the accused." Was there such a connection between the two larcenies as that evidence of the former larceny would be admissible on the trial of the latter? It is shown by the record beyond question that the two bunches of hogs were taken from the same range, driven to market at the same time, in the same wagons by the two Youngs, and sold to the same man together at the same time. The larceny is still in progress; the transaction still going on. And in Rapalje on Larceny, § 201, it is said: "Under an indictment for larceny, evidence of the subject-matter of another indictment for larceny may be admitted where the two offenses are so connected as to be parts of the same transaction." So, also, McClain, in his work on Criminal Law, says: "Other distinct larcenies committed by the defendant cannot be shown for the purpose of identifying him as the one who committed the larceny in question, but other crimes of the same character, and forming part of the same transaction, may be shown." "To make one criminal act evidence of another, some connection must exist between them. That connection must be traced in the general design, purpose, or plan of the defendant, or it may be shown by such circumstances of identification as necessarily tend to establish that the person who committed one must be guilty of the other. The collateral or extraneous offense must form a link in the chain of circumstances or proofs relied upon for conviction. Evidence of the perpetration by the defendant of a crime other than that on trial is not admissible unless such connection be shown between the two offenses as tends to prove that if the defendant were guilty of the one he was also guilty of the other." Swan v. Com., 104 Pa. 218, 4 Am. Cr. R. 188. So, in the case of Reed v. State, 54 Ark. 621; 16 S. W. Rep. 819, the court said: "But the evidence in the case at bar in reference to the saddle pockets, girth, and stirrups, while not competent for the purpose of proving the defendant guilty of the larceny with which he was charged, was competent to identify the appellant as the party who committed the larceny. If these articles had been received by appellant lawfully, and found, as they were afterward found, attached to the saddle in the possession of the appellant, these facts would have been circumstances tending to show that appellant was the person who took the saddle. If the evidence was competent for this purpose, it would not have been incompetent because it might have tended to show that appellant stole the saddle pockets, stirrups, and girth." In Hughes' Criminal Law and Procedure, it is said: "Sec. 3137. Proof of another distinct offense is competent if it in any way tends to prove the accused guilty of the crime for which he is on trial, or where there is such a logical connection between the two that the one tends to establish the other, or where the two acts form but one transaction, or to prove motive and intent.

"Sec. 3138. It is not a valid objection to evidence, otherwise competent, that it tends to prove the prisoner guilty of a distinct and different offense. Evidence of other offenses is admissible to prove intent, motive, knowledge, malice and the like"—citing State v. Palmer, 65 N. H. 216, 20 Atl. Rep. 6, 8 Am. Cr. Rep. 199; State v. Kepper, 65 Iowa, 745, 23 N. W. Rep. 304, 5 Am. Cr. Rep. 594; Territory v. McGinnis, 61 Pac. Rep. 208, 10 N. M. 269; Commonwealth v. Corkin, 136 Mass. 429; Commonwealth v. Choate, 105 Mass. 451; Commonwealth v. Blood. 141 Mass. 575, 6 N. E. Rep. 769; Maynard v. People, 135 Ill. 432, 25 N. E. Rep. 740; Underhill. Cr. Ev. § 89.

It is contended by counsel for appellant that evidence cannot be admitted as to the former larceny, because it was too far removed in point of time, citing Parker v. U. S., 1 Ind. Ter. 592, 43 S. W. Rep. 858. But the court there used this language: "If, in addition to the fact that the stolen property was found in the possession of the defendant recently after the alleged larceny, it be shown that it had been stolen at or about the same time and place as that charged to have been stolen, then it is admissible in all of the cases, because under the circumstances of each case it tends to prove the matter in controversy." And in Dunn v. State, 2 Ark. 229, 35 Am. Dec. 54, the court says: "The testimony of the prisoner's guilt or participation in the commission of a crime or felony, wholly unconnected with that for which he is put upon his trial, cannot, as a general rule, be admitted, is unquestionably true; but in cases where the *scienter* or *quo animo* is requisite to, and constitutes a necessary and es-

sential part of, the crime with which the prisoner is charged, and proof of such guilty knowledge, or malicious intention, is indispensible to establish his guilt, in regard to the transaction in question, or in cases of forgery, murder, and the like, testimony of such acts, conduct, or declarations of the accused as tend to establish such knowledge or intent is competent legal testimony to go to the jury, notwithstanding they may constitute in law a distinct crime. * * * Testimony, however, of a distinct murder, committed by the prisoner at a different time, or of some other felony or transaction committed upon or against a different person and at a different time, in which the prisoner participated, cannot be admitted until proof has been given establishing, or tending to establish, the offense with which he is charged, and showing some connection between the different transactions."

This court is of the opinion that the court below committed no error in allowing the testimony complained of to go to the jury; and as the charge of the court does not appear in the record, and no exceptions were taken thereto by appellant, we may presume that under the charge of the court the jury had correct instructions as to the law applicable to the case.

In our judgment, there was sufficient evidence to sustain the verdict, and the judgment of the court below should be, and it is hereby, affirmed.

NOTE.—*Testimony of Other Offenses as Evidence of Offense Charged—As to Evidence Admissible of the Defendant Having Committed Other Larcenies.*—"As a general rule" it is laid down on page 121, 8th Encyclopedia of Evidence, "the guilt of the accused or his participation in the commission of another larceny wholly disconnected with the larceny for which he is on trial, cannot be introduced in evidence against him. But where the evidence offered directly tends to prove the particular larceny charged, it is to be received although it may also tend to prove the commission of another separate and distinct offense; but to admit the evidence there must be a connection or blending which renders it necessary that the whole matter should be disclosed in order to show its bearing on the issue at trial."

The above no doubt correctly states the rule of evidence in such cases. The difficulty that has presented itself to the various courts is in the application of the rule and this being a matter of opinion different courts might under the same circumstances make a different application of the rule. There is no doubt when the other larceny is a distinct one that evidence of it is inadmissible. As to the reason why such evidence is not admissible, it is well stated that it is because the defendant has had no opportunity to prepare himself to meet an accusation that may be presumed from another crime. But even this rule, say the court in State v. Goetz, 34 Mo. 89, and is subject to various exceptions, renders it necessary by the difficulty the state labors under to establish the intent with which the act is done. And as exceptions upon an indictment for giving a forged note, knowing it to be forged, evidence may be given of other forged notes having been had by the prisoner in order to show his knowledge of the forgery. And, so too, it is said, if upon an indictment for maliciously shooting, the question is whether the shooting was by accident or design, proof might be given that the prisoner at another time intentionally shot at the same person.

In the case of State v. Goetz defendants with others had been charged with stealing various articles of jewelry from the store of a person in St. Louis. Upon the trial it was shown that defendants accompanied by two small children were on that day in the store examining and pricing goods, and while engaged in showing some articles which he placed upon the counter for their inspection, and suspecting that defendants had taken them procured their arrest, whereupon several articles of jewelry, such as breast-pins, bracelets, watches, etc., articles of value were found in their possession or dropped by them on the street on the way to the prison. The theory of the defense was that the property was taken by the childen and placed by them upon the person of the defendants. Evidence tending to prove, that on the same day and at the same hour that stores in the vicinity of the one from which they were accused of taking property, the defendants had taken other articles from other persons, was admitted and a new trial was granted for that reason. In Commonwealth v. Williamson (Kentucky 1904), 27 S. W. Rep. 812, where the charge was the stealing of fifty pounds of feathers and it was shown that the accused received a mattrass filled with goose feathers promising to clean and return it, but he returned it filled with chicken feathers, evidence was held admissible that the defendant was shipping large quantities of goose feathers and receiving chicken feathers. In McIven v. State (Texas 1900), 60 S. W. Rep. 50, where the defendant was on trial for stealing a horse, it was held to be error to admit evidence of the theft of a saddle where it was not shown that the saddle and horse were stolen at the same time and place. In Grant v. State (Texas 1900), 50 S. W. Rep. 1026, the charge was for the theft of eight hogs. Evidence was introduced by the state identifying the two different transactions, the first being that defendant and his co-defendant brought into the county eight dead hogs. This was about the 16th of January. About two weeks later they brought ten dead hogs into said county. Among the latter was a red hog. This was held to be error, the courts holding evidence of contemporaneous thefts are admissible in determining the *res gestae* proving identity or showing intent. But to be admissible must not only be contemporaneous but must prove or tend to prove in a legitimate way one of the objects or purposes. In Endaily v. State, 39 Ark. 278, the defendant was charged with stealing a horse. Evidence of the stealing of a saddle from another party soon afterwards to equip the horse for riding was held to be inadmissible as the stealing of the saddle was a separate and independent crime. In Bonsall v. State, 35 Ind. 460, the defendant was charged with stealing a pocketbook, and evidence was introduced showing that on the next day the defendant enticed the prosecuting witness into an alley, knocked him down, beat him, and robbed him of other moneys. This was a different crime and should not have been admitted as evidence. In Sartin v. State, 85 Tenn. 679, where the indictment was for stealing horses, evidence was allowed to be introduced for stealing horses. At another time it was shown that all the horses were stolen in pursuance of the previous design. In Parker v. U. S. (Ind. Ter. 1898), 43 S. W. Rep. 858, the court laid down the rule that in cases of larceny, proof that other stolen property was found in the possession of the defendant with the property charged to have been stolen, is

admissible for either of four purposes. First, to prove felonious intent. Second, to prove that the alleged theft was a part of the continuous transaction or scheme of larceny. Third, identifying the defendant. Fourth, identifying the stolen property. In Cowley v. State (Texas 1896), 1 S. W. Rep. 454, the defendant was charged with stealing a saddle, bridle and blanket. It was shown in the evidence that one Henry Lubbock had lost a horse, saddle, bridle and blanket in one day, they being taken from the front of a saloon. On the next afternoon the horse was found at one place. The defendant had rented a shed in another place with a loft above. Here he kept his fodder to feed h's pony. Sometime afterwards Lubbock's saddle, bridle and blanket were found in the northeast corner of this loft and among the fodder was also found some harness. In the yard used by the defendant was also found hitched a horse, the property of another person. The state introduced in evidence the fact that the harness was found among the fodder with saddle, bridle and blanket, that the horse was hitched in the yard of the stable. This the court held was incompetent as neither one of these things had anything to do with showing the stealing of the things charged.

In Nixon v. State (Texas 1892), 20 S. W. Rep. 364, the defendant was on trial for theft of a horse. Evidence that some three weeks before the theft he was in possession of and sold other horses stolen from other persons some twenty miles from the place of the theft, was held inadmissible as it did not tend to identify any fact or circumstance which gave aid in developing the *res gestae* nor to develop a criminal fact or circumstance against defendant in relation to the case on trial nor explain a relative or competent fact or circumstance pertaining to the theft charged. In Robinson v. State (Texas, 1898), 48 S. W. Rep. 176, where the defendant was charged with stealing a horse evidence was held to be admissible of stealing a saddle, where the saddle was stolen at the same time that the horse was stolen. In State v. Toohey (Missouri, 1907), 102 S. W. Rep. 530, where the defendant was charged with stealing brass fixtures from a Pullman car, evidence that he and another person indicted with him were seen together later the same day in a locomotive car breaking off brass and picking it up, was held to be admissible. In State v. Stark (Missouri, 1907), 100 S. W. Rep. 642, the defendant was charged with having forged a deed. Evidence was introduced that the defendant had in his possession about the same time a forged deed from the grantee of the first deed for the same land. This was held to be admissible.

In the previous volumes of the CENTRAL LAW JOURNAL the admissibility of evidence of similar crimes has been discussed. In volume 6, p. 221, comments were made upon the case of State v. Cowell, 12 Nev., where the defendants were jointly indicted of the crime of burglary and entered the dwelling house of one Alderson with intent to steal. Upon the trial one of the defendants on behalf of the state was allowed to testify. In a few days before the commitment of the burglary he and the other defendants agreed to commit burglary on the person of Alderson, but that he did not rob him because a person told him that he had nothing with him to be robbed of. On page 403 this decision is severely criticised, and it is there said that although there is much conflict in the adjudged cases on this point, it will be found on investigation that the rule adopted by the Supreme Court of Nevada, in State v. Cowell, is opposed as well as to the weight of American authority as to reason. The question is treated of again in Vol. 42, page 353, and also in Vol. 45, page 451, and in Vol. 51, pages 368 and 370, a leading case is given which is very fully annotated citing many authorities upon the proposition.

WM. M. ROCKEL.

Springfield, Ohio.

JETSAM AND FLOTSAM.

WOMEN NOT WARDS OF THE STATE.

There was handed down on June 24, 1907, the opinion of the New York Court of Appeals in People v. Williams, the reasoning of which makes the case one of very wide interest and importance. It was actually decided that the provision in section 77 of the Labor Law, that no female shall be employed or permitted to work in any factory before six o'clock in the morning or after nine o'clock in the evening, is unconstitutional as applied to an adult female. This result might have been reached, as was done by the majority of the Appellate Division (116 App. Div. 379), solely on the ground that, whether or not statutes discriminating as to length of hours of labor between men and women are unconstitutional, the section under which the present conviction was had arbitrarily restricting work by women before a certain hour in the morning and after a certain hour at night is a wanton and indefensible interference with liberty.

The court of appeals, however, goes further, and also founds its decision upon the broad principle that adult women may not be treated as special wards of the state. The following language of Mr. Justice Gray, speaking for a unanimous court, is very significant:

"Under our laws men and women now stand alike in their constitutional rights, and there is no warrant for making any discrimination between them with respect to the liberty of person or of contract.

* * * * * * * * *

In this section of the Labor Law it will be observed that women are classed with minors under the age of eighteen years; for which there is no reason. The right of the state as *parens patriae*, to restrict, or to regulate, the labor and employment of children is unquestionable; but an adult female is not to be regarded as a ward of the state, or in any other light than the man is regarded, when the question relates to the business pursuit or calling. She is no more a ward of the state than is the man. She is entitled to enjoy, unmolested, her liberty of person, and her freedom to work for whom she pleases, where she pleases and as long as she pleases, within the general limits operative on all persons alike."

Such view is in harmony with the one that has been frequently expressed in this place. On October 19th, 1906, in commenting upon the decision of this same case in the court of special sessions, we said:

"It is not improbable that the majority of American courts would hold, and, perhaps, the Supreme Court of the United States will decide, that laws discriminating as to permissible hours of work between men and women are health regulations, or, at least, that the legislative judgment should be accepted and they should be suffered to stand as health laws.

Nevertheless, since the decision by the Supreme Court of the United States in Lochner v. N. Y., 198 U. S. 45, holding the limitation of a ten-hour day for

employees of bakeries unconstitutional, the probability of acquiescence in legislative opinion seems to have been diminished. It may be that that court will assume to determine for itself whether there is any substantial justification for holding the discrimination within the police power.

Without being dogmatic and realizing that the present weight of authority is in favor of the laws, we would nevertheless suggest that there are strong considerations to the contrary. There is no doubt that laws restricting hours of labor uniformly for both sexes to reasonable periods would be valid as health regulations. We deem it doubtful, however, whether the public health would suffer any more by permitting 'future mothers' to work more than ten hours in factories than it would by permitting 'future fathers' to be similarly employed for like periods. There is an old adage that 'a man works from sun to sun, but a woman's work is never done.' In kinds of work which are within women's strength and capacity it is probable that the average power of endurance is as great in females as in males. The former proverbial 'sickliness' of American women was due to their artificial, indoor habits. In England, and, for that matter, in this country, women of wealth ride all day to the hounds with all the indafatigable and tireless zest of their male companions. In some countries of Continental Europe women of the peasantry labor unremittingly in farm work without prostrating weariness or disturbance of physical functions. Reading between the lines of several of the opinions that have upheld the sex discrimination, one may perceive the chivalric favoritism for women, which prevails in this country probably more than anywhere else, and is one of the noblest characteristics of American life. It seems not improbable that this sentiment, much more than scientific conviction of sanitary or hygienic ends, is the basis of the legislation in question and of its treatment by the courts."

The court of appeals, citing as we did the Lochner case, in effect says that statutes discriminating between men and women as to hours of labor would not be sustainable as health laws, but would be unconstitutional as unwarrantably interfering with liberty and as denying the equal protection of the laws. So far as we know, the only decision by a court of last resort to the same effect is Ritchie v. People, by the Supreme Court of Illinois, 105 Ill. 998. Other courts may now, however, fall in line with the Illinois and New York tribunals, especially under the policy laid down by the Supreme Court of the United States in the Lochner case.—*New York Law Journal.*

BOOKS RECEIVED.

The American State Reports, containing the cases of general value and authority subsequent to those contained in the "American Decisions" and the "American Reports," decided in the Courts of Last Resort of the Several States. Selected, Reported, and Annotated. By A. C. Freeman. Volume 114. San Francisco: Bancroft-Whitney Company, Law Booksellers. 1907. Review will follow.

HUMOR OF THE LAW.

A LAYMAN'S CONSTRUCTION OF A NOTARIAL "COMMISSION."

When a layman undertakes to criticise a lawyer's execution of a legal document he quite generally makes himself ridiculous. An excellent illustration of such a result is the story related to us by our esteemed subscriber and correspondent, Mr. J. D. Skeen, one of the prominent members of the bar of Ogden, Utah. It seems that Mr. Skeen drew a contract for a client whom we will call Mr. A, and took A's acknowledgment to the contract. In conformity with the law of the state Mr. Skeen added the usual memorandum as to the expiration of his notarial commission as follows: "My commission expires June 17, 1910." This little clause aroused the curiosity and indignation of Mr. B, to whom the contract was given by A and for whose benefit it was made. Mr. B had visions of a lawyer's sleight of hand by which he was to receive a commission on the subject matter of the contract for several years to come and thus devour the whole of the "bone of controversy," and he therefore sat down and wrote Mr. Skeen's client the following letter, the original copy of which Mr. Skeen has forwarded to us and which we reprint in full, omitting names:

NEW YORK, Aug. 16, 07.

DEAR SIR,

This contract that your Notary Public made for you, is *no good*, because, he has placed a clause in it which calls for commission in June 7, 1910 which will amount to almost, the entire value of the lots, therefore go to Mr. J. D. Skeen your Notary Public and have this *contract changed* so that the commission clause shall not be printed within. *He is* merely trying to intrude *upon you* and *me* for commission which he is legally, not entitled to. Show him this letter.

Yours Truly.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ABATEMENT AND REVIVAL—Action for Injuries to Real Property.—An action for injuries to property caused by the operation of a railroad held not to abate upon her death, but to devolve upon her executor under

Code Pub. Gen. Laws, art. 75, § 25.—Baltimore Belt R. Co. v. Sattler, Md., 65 Atl. Rep. 752.

2. ABATEMENT AND REVIVAL—Laches.—The neglect of a party, without excuse, to revive action for a period which would bar the claim on which it was based, requires the court to refuse to revive the action against the defendant's executor.—Washington Trust Co. v. Baldwin, 102 N. Y. Supp. 1105.

3. ADVERSE POSSESSION—Judgment.—Fact that clerk does not name certain prevailing parties to a judgment in *remittitur*, but designates them by the term "*et al.*," does not nullify the judgment in their favor.—Garrigan v. Huntimer, S. Dak., 111 N. W. Rep. 563.

4. ADVERSE POSSESSION—Nature and Requisites.—The taking possession and occupancy of vacant land by a mere squatter does not work a disseisin of the true owner, nor will such possession ripen into title, but to constitute adverse possession it must originate under claim or color of title having reference to some distinct source from which it is claimed to have been deraigned. —Jasperson v. Scharnikow, U. S. C. C. of App., Ninth Circuit, 150 Fed. Rep. 571.

5. ALIENS—Fraudulent Naturalization.—An alien who makes a false affidavit of naturalization in order to procure his registration as a voter is guilty of the offense of falsely representing himself to be a citizen of the United States for a fraudulent purpose, in violation of Rev. St. § 5428 [U. S. Comp. St. 1901, § 3670].—Green v. United States, U. S. C. C. of App., Ninth Circuit, 150 Fed. Rep. 560.

6. ANIMALS—Running at Large.—Under an ordinance held, that animal running at large in a city may be impounded, though at large through no fault of the owner. —Evans v. Holman, Mo., 100 S. W. Rep. 624.

7. APPEAL AND ERROR—Errors Committed.—Errors committed in an action at law can be reviewed in the Supreme Court of the United States only by writ of error.—Behn, Meyer & Co. v. Campbell & Go Tauco, U. S. S. C., 27 Sup. Ct. Rep. 502.

8. APPEAL AND ERROR—Evidence.—Any errors of law in the opinion of the court below on discussion of the evidence will not be considered by the Supreme Court of the United States on writ of error if not contained in the assignment of errors, where it is clear that the facts justified the judgment.—Behn, Meyer & Co. v. Campbell & Go Tauco, U. S. S. C., 27 Sup. Ct. Rep. 502.

9. APPEAL AND ERROR—Injunction.—On the hearing of an application for a temporary injunction on the bill and affidavits and counter affidavits of the defendant, an interlocutory decree denying such application will not be reversed unless a clear abuse of discretion is shown. —Simms v. Patterson, Fla., 43 So. Rep. 421.

10. APPEAL AND ERROR—Statement of Testimony.—A mere reference to the record held not a compliance with court rule providing that to each proposition there shall be subjoined a statement of sufficient of the record to explain and support the proposition.—Robertson v. Warren, Tex., 100 S. W. Rep. 805.

11. APPEAL AND ERROR—Supplemental Abstract.—Where the abstract of record is insufficient, the court will not go to the transcript for the information necessary to an understanding of the case, even though there is a complete transcript filed.—Harding v. Bedoll, Mo., 100 S. W. Rep. 638.

12. APPEARANCE—Special Appearance of Foreign Corporation.—The special appearance of a foreign corporation defendant in a state court for the single purpose of insisting that no valid service has been made upon it is not a submission to the claimed jurisdiction.—Lathrop-Shea & Henwood Co. v. Interior Const. & Imp. Co., U. S. C. C., N. D. N. Y., 150 Fed. Rep. 666.

13. ATTORNEY AND CLIENT—Purchase of Client's Property.—An attorney purchasing at a sale policies of life insurance belonging to his clients held accountable to them for the value of the policies less the amount paid therefor by him.—Nichols v. Riley, 103 N. Y. Supp. 554.

14. BANKRUPTCY—Allowance of Costs and Damages on Dismissal.—An alleged bankrupt whose property has been seized, on the dismissal of the petition against him, cannot split his demand and obtain an allowance of costs, counsel fees, and expenses, under Bankr. Act, § 3e, and a further allowance for damages, under section 69a.—Nixon v. Fidelity & Deposit Co. of Maryland, U. S. C. C. of App., Ninth Circuit, 150 Fed. Rep. 574.

15. BANKRUPTCY—Bankruptcy of Petitioner.—Where one of the petitioners in a petition in involuntary bankruptcy himself becomes a bankrupt before the hearing, his trustee may be substituted in his place as petitioner. —Hays v. Wagner, U. S. C. C. of App., Sixth Circuit, 150 Fed. Rep. 583.

16. BANKRUPTCY—Compensation of Trustee.—Where all the proceeds of a sale of a bankrupt's assets were applicable to the payment of a preferred lien thereon, it was immaterial that such application would deprive the trustee of all compensation for his services.—Smith v. Township of Au Gres, Michigan, U. S. C. C. of App., Sixth Circuit, 150 Fed. Rep. 257.

17. BANKRUPTCY—Debts Entitled to Priority.—Allegations, in a verified petition for the allowance of a claim in bankruptcy, of facts to establish the right of such claim to priority, are not to be taken as *prima facie* true, but they must be proved by evidence.—*In re* Jones, U. S. D. C., N. D. Mich., 150 Fed. Rep. 108.

18. BANKRUPTCY—Exemptions.—The exemption laws of the state where the bankrupt has his domicile control the exemption allowed in bankruptcy proceedings. —McCarty v. Coffin, U. S. C. C. of App., Fifth Circuit, 150 Fed. Rep. 307.

19. BANKRUPTCY—Examination of Bankrupt.—A court of bankruptcy has power, under Bankr. Act, ch. 541, § 21a, and as well under its general equity powers, to order an alleged bankrupt, for whose property a receiver has been appointed, to appear for examination, although no adjudication has yet been made.—*In re* Fleisher, U. S. D. C., S. D. N. Y., 150 Fed. Rep. 81.

20. BANKRUPTCY—Joinder of Causes.—Where trustee in bankruptcy was appointed for two bankrupts individually and for them as a firm, he held but one office, and in an action by him to set aside an alleged fraudulent conveyance there was no misjoinder of plaintiffs.—Wright v. Simon, 102 N. Y. Supp. 1108.

21. BANKRUPTCY—Liens.—A parol assignment of notes and accounts to secure an indorser is valid as against the trustee in bankruptcy of the assignor where made and acted on by the assignee in good faith.—Union Trust Co. v. Bulkeley, U. S. C. C. of App., Sixth Circuit, 150 Fed. Rep. 510.

22. BANKRUPTCY—Limitations as to Proof of Debt.—Under Bankr. Act, ch. 541, § 57n, which expressly provides that claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication, an attachment creditor who deemed himself secured, and did not prove his claim within the time so limited lest it should prejudice his rights under the attachment, cannot prove it thereafter upon being defeated on the attachment.—*In re* Baird, U. S. D. C., E. D. Pa., 150 Fed. Rep. 600.

23. BANKRUPTCY—Preferences.—The failure to record a deed or mortgage until after bankruptcy of the grantor, which instrument is valid as between the parties, under Civ. Code Cal., § 1217, does not render it voidable as a preference under Bankr. Act, nor can it be set aside as fraudulent where there was no agreement to withhold it from record or active concealment.—*In re* McIntosh, U. S. C. C. of App., Ninth Circuit, 150 Fed. Rep. 546.

24. BANKRUPTCY—Preferences.—A trustee in bankruptcy may maintain a suit in equity to recover a payment made by bankrupt to a creditor as a voidable preference; such suit being in the nature of a creditors' suit to set aside a fraudulent conveyance.—Parker v. Black, U. S. C. C. of App., Second Circuit, 150 Fed. Rep. 18.

25. BANKRUPTCY—Refusal to Discharge.—The denial of a bankrupt's application for a discharge renders the issue as to his right to a discharge *res judicata* as to debts which were provable in that proceeding, and he may

properly be restrained by the court from prosecuting an application for a discharge from such debts in a second proceeding.—*In re* Kuffler, U. S. C. C. of App., Second Circuit, 150 Fed. Rep. 12.

26. BANKRUPTCY—Release of Surety.—A voluntary or involuntary adjudication of bankruptcy as a general proposition does not have the effect to release the surety of a bankrupt of his obligation as a surety.—D. C. Wise Coal Co. v. Columbia Lead & Zinc Co., Mo., 100 S. W. Rep. 680.

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28. BANKRUPTCY—South Dakota Statute as to Exemptions.—Under Code Civ. Proc. S. D. 1903, §§ 346, 363, relating to exemptions, a bankrupt partnership is not entitled to claim an exemption.—*In re* Novak, U. S. D. C., D. S. Dak., 150 Fed. Rep. 602.

29. BANKRUPTCY—Suit to Cancel Deed.—A suit by a bankrupt's trustee to cancel a deed to certain of the bankrupt's property held reviewable by appeal under Bankr. Act, ch. 541, § 24a, and not be a petition to revise.—McCarty v. Coffin, U. S. C. C. of App., Fifth Circuit, 150 Fed. Rep. 307.

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31. BILLS AND NOTES—Consideration of Transfer.—A credit on an old account which did not discharge the debt or any part of it, or extend the time of payment, was not a valuable consideration for the transfer of a note.—National Bank of Barre v. Foley, 103 N. Y. Supp. 553.

32. BOUNDARIES—Private Roads.—Where a conveyance gives a private way as a boundary and the title of the grantor extends to the center thereof, title to the center presumably passes.—Gray v. Kelley, Mass., 80 N. E. Rep. 651.

33. CARRIERS—Express Companies.—Where an express company held itself out as a common carrier of money, it was bound to comply with an order of the railroad commissioners requiring it to receive packages of money on the day preceding actual shipment, though such compliance would result in loss to the express company.—Platt v Le Cocq, U. S. C. C., D. S. Dak., 150 Fed. Rep. 391.

34. CARRIERS — Liability of Connecting Carriers. — Where two connecting carriers participated in the transportation of stock, they were properly joined in an action for negligent transportation, though the liability of each was limited to injuries occurring on its own line.—Cincinnati, N. O. & T. P. Ry. Co. v. Greening, Ky., 100 S. W. Rep. 825.

35. CARRIERS—Time Limit Tickets.—Under the facts a passenger held not bound to take a connecting train which would not carry her through to her destination and entitled to ride on her ticket on the day following its expiration on a train which ran through to her destination.—Stevens v. Wichita Valley Ry. Co., Tex., 100 S. W. Rep. 807.

36. COMMERCE—Exclusive Control.—Exclusive control over interstate commerce vested in congress held not infringed by enforcement against a vessel engaged in interstate commerce if a lien given by a state statute for materials used in its construction.—Iroquois Transp. Co. v. De Laney Forge & Iron Co., U. S. S. C., 27 Sup. Ct. Rep. 509.

37. COMMERCE—Police Power of State.—Coal oil imported into a state becomes subject to the police power and commerce regulations of the state, though an article of interstate commerce before its importation.—Standard Oil Co. v. State, Tenn., 100 S. W. Rep. 705.

38. CONFUSION OF GOODS—Liens.—Where a wrongdoer knowingly mingles the property of another with his own in such manner that it becomes undistinguishable, the owner may follow the property or its proceeds for the purpose of fastening an equitable lien for the property of which he had been dispossessed.—Smith v. Township of Au Gres, Michigan, U. S. C. C. of App., Sixth Circuit, 150 Fed. Rep. 257.

39. CONSTITUTIONAL LAW—Game Regulations.—Laws 1900, p. 28, ch. 20, § 31, as amended by Laws 1904, p 1409, ch. 582, and Laws 1902, p. 487, ch. 194, § 141, prohibiting the possession of pheasants within the state for sale, held not unconstitutional as a deprivation of property without due process of law.—People v. Waldorf-Astoria Hotel Co., 103 N. Y. Supp. 434.

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43. CONSTITUTIONAL LAW—Transfer Tax.—Reduction of estate from imposition of transfer tax under amendment of general tax law by Laws N. Y. 1897, p. 150, ch. 284, on the exercise by will of a power to appoint held not to render such statute in violation of Const. U. S., art. 1, § 10, as impairing contract obligation.—Chanler v. Kelsey, U. S. S. C., 27 Sup. Ct. Rep. 550.

44. CONTRACTS—Assumption of Debts by Continuing Partner.—A creditor who sues on a contract made by a third person with the debtor to assume and pay the debt does so subject to all the equities existing between the original parties to the contract.—Fish v. First Nat. Bank, U. S. C. C. of App., Ninth Circuit, 150 Fed. Rep. 524.

45. CONTRACTS—Effect of Illegality. — Where a contract when made is illegal, the illegality cannot be waived, nor can a party be estopped to set it up as a defense to an action on such contract by having received the benefit thereof or by part performance.—Pittsburgh Const. Co. v. West Side Belt R. Co., U. S. C. C., W. D. Pa., 150 Fed. Rep. 125.

46 CONTRACTS—Liability on Contract. — To avoid a contract on the ground of excessive intoxication, one must rescind the contract within a reasonable time after recovering his senses, or, if he has received no consideration, he must, within a reasonable time, disclaim liability thereon.—J. I. Case Treshing Mach. Co. v. Meyers, Neb., 110 N. W. Rep. 602.

47. CONVERSION—Real Estate.—Where testator's will directed a conversion of his land into personal property, it should be treated as personalty in the hands of his executors to the extent of its value.—Hardin v. Hassell, Tenn., 100 S. W. Rep. 720.

48. COPYRIGHTS—Photographs of Sculpture.—A photograph of a copyrighted piece of sculpture is a "copy" thereof within the meaning of Rev. St., § 4952 [U. S. Comp. St. 1901, p. 3406], and, if made without authority from the proprietor of the copyright, is an infringement thereof.—Bracken v. Rosenthal, U. S. C. C., N. D. Ill., 150 Fed. Rep. 186.

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53. COUNTIES—Issuing of County Railroad Bonds.—A presumption of a compliance with conditions precedent to issuance of county railway aid bonds arises from the fact of subscription and issuance by the officer charged with such duty.—Quinlan v. Green County, U. S. S. C., 27 Sup Ct. Rep. 505.

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56. COURTS—Decision. — Decision of state supreme court that foreign mutual insurance company not authorized to do business in the state could not sue to collect assessments on a policy issued in another state on request of broker in the state cannot be reviewed in Supreme Court of United States as a federal question.—Swing v. Weston Lumber Co., U. S. S. C , 27 Sup. Ct. Rep. 497.

57. COURTS—Testimony at Trial.—Testimony in suit by cotton exchange to enjoin using quotations of sales on such exchange that the value of the right to control quotations is much greater than $2,000 held not impaired by evidence that the value varies with the volume of business.—Hunt v. New York Cotton Exch., U. S. S. C., 27 Sup. Ct. Rep. 529.

58. CUSTOMS DUTIES—Isle of Pines.—The Isle of Pines held a foreign country within the meaning of Dingley Tariff Act July 24, 1897, ch. 11, 30 Stat. 151 [U. S. Comp. St. 1901, p. 1626].—Pearcy v. Stranahan, U. S. S. C., 27 Sup. Ct. Rep. 545.

59. CUSTOMS DUTIES—Merchant Appraisers.—A mere uncertainty is not enough to overcome the presumption that a collector of customs in selecting a merchant appraiser, under Rev. St., §2930, appointed a person duly qualified.—Erhardt v. Ballin, U. S. C. C. of App., Second Circuit, 150 Fed. Rep. 529.

60. CRIMINAL EVIDENCE—Confessions.—The testimony of an officer as to what one on trial for horse theft said with reference to how he came into possession of the horse held inadmissible because made by accused while in the custody of the officer.—Binkley v. State, Tex., 100 S. W. Rep. 780.

61. CRIMINAL TRIAL—Admissionof Evidence.—Error in admitting in a criminal prosecution evidence of a statement by a witness to the county attorney and grand jury which she testifies was made under threat of being sent to jail is not cured by an instruction limiting the consideration of the evidence to impeachment.—Skeen v. State, Tex., 100 S. W. Rep. 770.

62. CRIMINAL TRIAL—Argument of County Attorney.—The county attorney on the second trial, after reversal of a conviction of manslaughter on a trial on an indictment for murder, properly read the indictment as required by Code, § 5372.—State v. Walker, Iowa, 110 N. W. Rep. 925.

63. CRIMINAL TRIAL—Dying Declarations.—On an appeal in a murder trial, record held to disclose nothing reviewable on the exclusion of evidence tending to show that decedent was an infidel, offered to lessen the weight to be attached to his dying declaration.—State v. Zorn, Mo., 100 S. W. Rep. 591.

64. DAMAGES—Exemplary Damages.—Punitive damages may be recovered by a railroad employee injured because of the violation by an engineer of a promise not to move his engine while plaintiff was at work.—Chesapeake & O Ry. v. Satterfield, Ky., 100 S. W. Rep. 844.

65. DEATH—Nature of Remedy.—An action against a carrier for causing the death of a person transported in a private car sounds in tort, where no contract is set up in the complaint.—Cleveland, C., C. & St. L. Ry. Co. v. Henry, Ind., 80 N. E. Rep. 636.

66. DESCENT AND DISTRIBUTION—Rights of Heirs.—In a controversy between heirs of a ward, commissions to the guardian for the care of real estate should be charged to the interest rather than the principal of the fund derived from the sale of real estate.—McDonald v. Weisiger, Ky., 100 S. W. Rep. 832.

67. ELECTION OF REMEDIES—Seller.—Seller in contract of conditional sale held not by attempting to enforce materialmen's liens to make an election preventing him from suing in replevin.—William W. Bierce v. Hutchins, U. S. S. C., 27 Sup. Ct. Rep. 524.

68. EMINENT DOMAIN—Buildings Erected After Commencement of Proceedings.—One erecting a house on his lot after commencement of proceedings to take it for street, but before the city had acquired title, held entitled to damages on account of the building.—*In re* Briggs Avenue in City of New York, 102 N. Y. Supp. 1102.

69. EVIDENCE—Market Value of Property.—On an issue as to whether the property sold brought its market value, it was proper to allow evidence tending to show the reason for the depreciated value.—Robertson v. Warren, Tex., 100 S. W. Rep. 805.

70. EXCEPTIONS, BILL OF—General Statements.—General statements in bill of exceptions in action on a bond held to furnish no basis for assertion that there was no evidence of the amount of damages sustained from each of the breaches of contract.—Mercantile Trust Co. v. Hensey, U. S. S. C., 27 Sup. Ct. Rep. 535.

71. EXECUTION—Persons Liable for Wrongful Execution.—An execution creditor who is not present at the time the property is levied on, and does not authorize or sanction abuse of such property, is not liable for damages.—Ainsa v. Moses, Tex., 100 S. W. Rep. 791.

72. EXECUTORS AND ADMINISTRATORS—Powers.—A will giving an executrix power to sell, lease, or mortgage testator's real estate, and to do all things necessary in the management thereof, did not authorize the executrix to partition property held by testator at his death as tenant in common.—Sengens v. Fennell, 103 N. Y. Supp. 5 0.

73. EXTRADITION—Indictment.—Where petitioner was extradited for an extraditable offense, but the indictment was quashed in the demanding state, he was not entitled to an opportunity to return before being compelled to answer a new indictment on the same facts.—*Ex parte* Fischl, Tex., 100 S. W. Rep. 773.

74. FIRE INSURANCE —Liability of Members of Mutual Company.—A member of a foreign insurance society held sufficiently bound by a foreign decree of dissolution and appointing a trustee to collect assessments levied on members to require him to answer in a suit by the trustee.—Swing v. Karges Furniture Co., Mo., 100 S. W. Rep. 662.

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55. COURTS—Contempt.—Objections that information in contempt was not supported by affidavit until after it was filed and the suits referred to were not then pending present question of local law, which will not sustain writ of error from the federal supreme court.—Patterson v. People of State of Colorado, U. S. S. C., 27 Sup. Ct Rep. 556.

56. COURTS—Decision.—Decision of state supreme court that foreign mutual insurance company not authorized to do business in the state could not sue to collect assessments on a policy issued in another state on request of broker in the state cannot be reviewed in Supreme Court of United States as a federal question.—Swing v. Weston Lumber Co., U. S. S. C , 27 Sup. Ct. Rep. 497.

57. COURTS—Testimony at Trial.—Testimony in suit by cotton exchange to enjoin using quotations of sales on such exchange that the value of the right to control quotations is much greater than $2,000 held not impaired by evidence that the value varies with the volume of business.—Hunt v. New York Cotton Exch., U. S. S. C., 27 Sup. Ct. Rep. 529.

58. CUSTOMS DUTIES—Isle of Pines.—The Isle of Pines held a foreign country within the meaning of Dingley Tariff Act July 24, 1897, ch. 11, 30 Stat. 151 [U. S. Comp. St. 1901, p. 1626].—Pearcy v. Stranahan, U. S. S. C., 27 Sup. Ct. Rep. 545.

59. CUSTOMS DUTIES—Merchant Appraisers.—A mere uncertainty is not enough to overcome the presumption that a collector of customs in selecting a merchant appraiser, under Rev. St., §2930, appointed a person duly qualified.—Erhardt v. Ballin, U. S. C. C. of App., Second Circuit, 150 Fed. Rep. 529.

60. CRIMINAL EVIDENCE—Confessions.—The testimony of an officer as to what one on trial for horse theft said with reference to how he came into possession of the horse held inadmissible because made by accused while in the custody of the officer.—Binkley v. State, Tex., 100 S. W. Rep. 780.

61. CRIMINAL TRIAL—Admissionof Evidence.—Error in admitting in a criminal prosecution evidence of a statement by a witness to the county attorney and grand jury which she testifies was made under threat of being sent to jail is not cured by an instruction limiting the consideration of the evidence to impeachment.—Skeen v. State, Tex., 100 S. W. Rep. 770.

62. CRIMINAL TRIAL—Argument of County Attorney.—The county attorney on the second trial, after reversal of a conviction of manslaughter on a trial on an indictment for murder, properly read the indictment as required by Code, § 5372.—State v. Walker, Iowa, 110 N. W. Rep. 925.

63. CRIMINAL TRIAL—Dying Declarations.—On an appeal in a murder trial, record held to disclose nothing reviewable on the exclusion of evidence tending to show that decedent was an infidel, offered to lessen the weight to be attached to his dying declaration.—State v. Zorn, Mo., 100 S. W. Rep. 591.

64. DAMAGES—Exemplary Damages.—Punitive damages may be recovered by a railroad employee injured because of the violation by an engineer of a promise not to move his engine while plaintiff was at work.—Chesapeake & O Ry. v. Satterfield, Ky., 100 S. W. Rep. 844.

65. DEATH—Nature of Remedy.—An action against a carrier for causing the death of a person transported in a private car sounds in tort, where no contract is set up in the complaint.—Cleveland, C., C. & St. L. Ry. Co. v. Henry, Ind., 80 N. E. Rep. 636.

66. DESCENT AND DISTRIBUTION—Rights of Heirs.—In a controversy between heirs of a ward, commissions to the guardian for the care of real estate should be charged to the interest rather than the principal of the fund derived from the sale of real estate.—McDonald v. Weisiger, Ky., 100 S. W. Rep. 882.

67. ELECTION OF REMEDIES—Seller.—Seller in contract of conditional sale held not by attempting to enforce materialmen's liens to make an election preventing him from suing in replevin.—William W. Bierce v. Hutchins, U. S. S. C., 27 Sup. Ct. Rep. 524.

68. EMINENT DOMAIN—Buildings Erected After Commencement of Proceedings.—One erecting a house on his lot after commencement of proceedings to take it for street, but before the city had acquired title, held entitled to damages on account of the building.—*In re* Briggs Avenue in City of New York, 102 N. Y. Supp. 1102.

69. EVIDENCE—Market Value of Property.—On an issue as to whether the property sold brought its market value, it was proper to allow evidence tending to show the reason for the depreciated value.—Robertson v. Warren, Tex., 100 S. W. Rep. 805.

70. EXCEPTIONS, BILL OF—General Statements.—General statements in bill of exceptions in action on a bond held to furnish no basis for assertion that there was no evidence of the amount of damages sustained from each of the breaches of contract.—Mercantile Trust Co. v. Hensey, U. S. S. C., 27 Sup. Ct. Rep. 535.

71. EXECUTION—Persons Liable for Wrongful Execution.—An execution creditor who is not present at the time the property is levied on, and does not authorize or sanction abuse of such property, is not liable for damages.—Ainsa v. Moses, Tex., 100 S. W. Rep. 791.

72. EXECUTORS AND ADMINISTRATORS—Powers.—A will giving an executrix power to sell, lease, or mortgage testator's real estate, and to do all things necessary in the management thereof, did not authorize the executrix to partition property held by testator at his death as tenant in common.—Sengens v. Fennell, 103 N. Y. Supp. 5 0.

73. EXTRADITION—Indictment.—Where petitioner was extradited for an extraditable offense, but the indictment was quashed in the demanding state, he was not entitled to an opportunity to return before being compelled to answer a new indictment on the same facts.—*Ex parte* Fischl, Tex., 100 S. W. Rep. 773.

74. FIRE INSURANCE—Liability of Members of Mutual Company.—A member of a foreign insurance society held sufficiently bound by a foreign decree of dissolution and appointing a trustee to collect assessments levied on members to require him to answer in a suit by the trustee.—Swing v. Karges Furniture Co., Mo., 100 S. W. Rep. 662.

75. GAME—Hunting License.—Laws 1905, pp. 168, 169, § 54, does not require a resident of the state to obtain a license to hunt in the county in which he resides.—State v. Noock, Mo., 100 S. W. Rep. 630.

76. GAME—Police Power.—The legislature possesses powers to regulate and prohibit the possession of game by its citizens not applicable to other personal property. —People v. Waldorf Astoria Hotel Co., 108 N. Y. Supp. 434.

77. GRAND JURY—Competency of Juror.—Under the law requiring that a grand juror shall be able to read and write the English language, a person who can neither read nor write in the presence of others held not a competent grand juror.—State v. McClendon, La., 43 So. Rep. 417.

78. GUARDIAN AND WARD—Accounting and Settlement. —A guardian held liable on his bond given under his appointment in Kentucky for money received belonging to his ward, notwithstanding his subsequent removal with his ward to another state and his appointment as guardian in that state.—Gilium v. Parker's Guardian, Ky., 100 S. W. Rep. 820.

79. GUARANTY—Assignment of Bond —Where a bond given by a subcontractor imported a general warranty, it was immaterial whether the obligee assigned the same to enable the owner to recover damages resulting from the subcontractor's breach of contract.—Wing & Bostwick Co. v. United States Fidelity & Guaranty Co., U. S. C. C., N. D N. Y., 150 Fed. Rep. 672.

80. HABEAS CORPUS—Extradition Proceedings.—Where the executive warrant issued in extradition proceedings is in due form, the burden is on defendant as relator in *habeas corpus* proceedings of overcoming the *prima facie* case thereby established.—State v. Schlachter, S. Dak., 111 N. W. Rep. 566.

81. HOMESTEAD—Abandonment. — Where a bankrupt conveyed his business homestead within five days after he made an assignment for the benefit of his creditors, such facts did not show an abandonment of the homestead so as to subject the same to the claims of his creditors.—McCarty v. Coffin, U. S. C. C. of App., Fifth Circuit, 150 Fed. Rep 307.

82. HOMICIDE—Materiality of Decedent's Character.— It is only when a showing of self-defense is made in a murder trial that evidence of the character and reputation of decedent for rashness, viciousness, and turbulence becomes material.—State v. Zorn, Mo., 100 S. W. Rep. 591.

83. INJUNCTION—Telephone Line.—In a suit for injunction to restrain destruction of complainant's telephone line, complainant held not required to establish its right at law as a preliminary to the granting of such injunction.—Northeastern Telephone & Telegraph Co. v. Hepburn, N. J., 65 Atl. Rep. 747.

84. INTOXICATING LIQUORS—Indictment Under Local Option Law.—An indictment for violating the local option law, alleging that the commissioners' court did pass and publish an order declaring the result of a local option election, held fatally defective.—Patton v. State, Tex., 100 S. W. Rep. 880.

85. INTOXICATING LIQUORS —License. — A license fee imposed on breweries and brewers' agents of $1,000 is not excessive.—Schmidt v. City of Indianapolis, Ind., 80 N. E. Rep. 682.

86. JUDGMENT—Jurisdiction of Territorial Court.—Jurisdiction of territorial court to order a sale of property by receiver appointed in an earlier action without extending receivership to the pending suit cannot be collaterally attacked after unsuccessful appeals to the territorial court and Supreme Court of the United States. —Gila Bend Reservoir & Irrigation Co. v. Gila Water Co., U. S. S. C., 27 Sup. Ct. Rep. 495.

87. JUDGMENT—Opening or Vacating.—A trustee of a bankrupt's estate is not an unnecessary party to a motion made to vacate and set aside a judgment purporting to perfect a lien of attachment, and to enforce the same against the identical property of which he holds the proceeds as a trustee.—D. C. Wise Coal Co. v. Columbia Lead & Zinc Co., Mo., 100 S. W. Rep. 680.

88. JURY—Commission.— The validity of an order in vacation directing the jury commission to convene on a particular day is not affected by the failure of the clerk to spread the order on the minutes.—State v. McClendon, La., 43 So. Rep. 417.

89. LANDLORD AND TENANT—Abandonment of Lease.— The act of a lessee in removing a float held not to constitute an abandonment of a lease of a location for a boat landing.—Commercial Wharf Corp. v. City of Boston, Mass., 80 N. E. Rep. 645.

90. LANDLORD AND TENANT—Tenancy at Will.—Where a lease has been extinguished by the sale of the property under a prior deed of trust, an oral contract to allow the lessee to continue under the terms of the lease until its expiration, does not revive the lease, but the lessee becomes a tenant at will.—McFarland Real Estate Co. v. Joseph Gerardi Hotel Co , Mo., 100 S. W. Rep. 577.

91. LIBEL AND SLANDER—Construction of Language Used.—If a published article d clared on as a libel is susceptible of two constructions, one libelous and the other not, there must be an innuendo ascribing to it the libelous meaning.—Daily v. New York Herald Co , U. S. C. C., S. D. N. Y., 150 Fed. Rep. 114.

92 LICENSES—Intoxicating Liquors.—Licenses on the liquor traffic and other occupations calling for regulations, although they yield a revenue, are licenses, and not taxes.—Schmidt v. City of Indianapolis, Ind., 80 N. E. Rep. 682.

93. LIFE INSURANCE—Acceptance of Contract.— Where plaintiffs retained life insurance policies over a year without examining them to see what the contract of insurance contained in them was, they are deemed to have accepted the contract as written.—Robertson v. Covenant Mut. Life Ins. Co., Mo., 100 S. W. Rep. 686.

94. MARRIAGE—Invalidity of Marriage.—Persons whose alleged marriage in Virginia might have been invalid for want of license had they remained there and invalid in Maryland for want of a religious ceremony held married in New Jersey, where they took up their permanent residence and lived together in good faith up to the time of the man's death.—Travers v. Reinhardt, U. S. S. C., 27 Sup. Ct. Rep. 563.

95. MARINE INSURANCE — Evidence of Acceptance of Abandonment.—The action of the insurers of a stranded vessel in taking and retaining possession of her to make temporary repairs and in finally permitting her to be sold for the cost of permanent repairs made at their instance held to be a constructive acceptance of an abandonment by the owner.—Hume v. Frenz, U. S. C. C. of App., Ninth Circuit, 150 Fed. Rep. 502.

96. MARITIME LIENS—Statutory Liens.—Under a state statute as well as under the general maritime law, a lien will not attach to a vessel for supplies or repairs unless it appears that credit was given to the vessel.—The Golden Rod, U. S. C. C. of App., Third Circuit, 150 Fed. Rep. 8.

97. MASTER AND SERVANT—Care Required of Employee. —A motorman operating a car on a single track held not relieved from the duty of exercising care in avoiding danger from collision with other cars, irrespective of the order he might have received respecting the running time of the car.—McGahan v. St. Louis Transit Co., Mo., 100 S. W. Rep. 601.

98. MASTER AND SERVANT—Contributory Negligence.— A servant continuing to work without objection where he had reasonable time to make objection after notice of the dangerous character of the machine and before his injury assumed the risk.—Meade v. Ashland Steel Co., Ky., 100 S. W. Rep. 821.

99. MASTER AND SERVANT—Liability for Act of Independent Contractor.—Occupant of store building adjoining a much frequented street in a populous city held guilty of negligence, in permitting an awning to be repaired by an independent contractor without taking precautions to guard pedestrians against injury from

falling material, etc.—McHarge v. M. W. Newcomer & Co., Tenn., 100 S. W. Rep. 700.

100. MASTER AND SERVANT—Negligence.—Where, while making repairs in its line, an electric railroad began to operate its cars in opposite directions over the same track, it was charged with the duty of guarding the safety of its employees by giving notice of a change in the running time of its cars.—Baldwin v. Schenectady Ry. Co. 103 N. Y. Supp. 514.

101. MASTER AND SERVANT—Res Ipsa Loquitur.—In an action against a railroad for injuries to plaintiff, a brake man, resulting from the giving way of a hand brake, plaintiff held not entitled to recover under the doctrine of "*res ipsa loquitur*."—Hamilton v. Kansas City Southern Ry. Co., Mo., 100 S. W. Rep. 671.

102. MONOPOLIES—Anti-Trust Law.—That an agreement in restraint of competition incidentally affected interstate commerce, held not to make it less a violation of the state anti-trust law.—Standard Oil Co. v. State, Tenn., 100 S. W. Rep. 705.

103. MINES AND MINERALS—Relocation.—A relocation of a mining claim admits the validity of the prior location, which is necessary to support a relocation, and a relocator cannot maintain ejectment against the original locator or his grantees on the ground that the first location was void.—Zerres v. Venina, U. S. C. C. of App., Ninth Circuit, 150 Fed. Rep. 564.

104. MORTGAGES — Foreclosure.—Jurisdiction in foreclosure held not defeated by inability to join all the parties and to sell all the land because of conveyance of part of the property to the territory.—Kawananakoa v. Polyblank, U. S. S. C., 27 Sup. Ct. Rep. 526.

105. MUNICIPAL CORPORATIONS—Public Work.—A city required to advertise for bids for public work and to let the contract to the lowest bidder held not required to readvertise for bids for the completion of a contract which had been abandoned by the contractor.—City of Milbank v. Western Surety Co., S. Dak., 110 N. W. Rep. 561.

106. MUNICIPAL CORPORATIONS—Signs Extending Over Sidewalk.—Defendant, by erecting an electric sign extending more than 18 inches into the street at a time when such structures were not prohibited, held not to have acquired a vested right to maintain the sign as against a subsequent ordinance prohibiting the same.—City of St. Louis v. St. Louis Theater Co., Mo., 100 S. W. Rep. 627.

107. NUISANCE—Grounds of Action.—The creation and maintenance of a private nuisance by discharging waste or filthy matter upon another's lands to his injury is actionable without regard to the question of negligence.—Exley v. Southern Cotton Oil Co., U. S. C. C., S. D. Ga., 150 Fed. Rep. 101.

108. NUISANCE—Theaters and Shows.—The conduct of a theater is not *per se* a public nuisance which a city may abate under Burns' Ann. St. Supp. 1905, § 3477, subd. 7.—City of Indianapolis v. Miller, Ind., 80 N. E. Rep. 626.

109. PARTITION—Defect in Title.—The conclusive presumption of payment of a mortgage barred by the statute of limitations may be invoked in a proceeding by a purchaser to be relieved from her purchase because the title is not marketable.—Ouvreier v. Mahon, 102 N. Y. Supp. 981.

110. PERPETUITIES — Vested Remainders.—Where a testator bequeathed his house and land to his brother, to hold until the last of his four children should become of age, and then to be sold and divided equally between the children, the remainder to the children was vested, and there was no suspension of the power of alienation. — *In re* Bray, 102 N. Y. Supp. 989.

111. PHYSICANS AND SURGEONS—Malpractice.—An opportunity by a physician to do malicious injury in January, with manifestations of ill will five months later held not to show that any improper surgical treatment was intentional.—Willard v. Norcross, Vt., 65 Atl. Rep. 755.

112. PLEADING—Set-off and Counterclaim.—One sued for debt for goods sold by a nonresident, may set off an unliquidated demand without averring that plaintiff is a nonresident, where the petition shows that fact.—Abernathy & Pinegar v. Myer-Bridges Coffee & Spice Co., Ky., 100 S. W. Rep. 862.

113. PRINCIPAL AND AGENT—Bringing of Suit.—The owner of a note already in judgment, who placed it in the hands of a collection agency with a distinct agreement that no suit is to be brought thereon, is not bound by the unauthorized action of the agent in bringing suit.—Satterlee v. First Nat. Bank, Neb., 110 N. W. Rep. 591.

114. RAILROADS—Authority of President.—The president of a railroad company, who under its by-laws was its chief executive officer, held authorized to direct plaintiff, who had been appointed consulting engineer by the board of directors, to render services with reference to a contemplated extension of the line.—Bogart v. New York & L. I. R. Co., 102 N. Y. Supp. 1093.

115. RAILROADS—Crossing Private Land.—A railroad company under its charter held bound, upon the division of land, to construct a private crossing on that part left without one, notwithstanding that when the road was originally constructed, a crossing was put in upon the land.—Louisville & N. R. Co. v. Emerson, Ky., 100 S. W. Rep. 863.

116. RAILROADS — Liability.—Ordinarily a railroad is not liable for injuries caused by a team taking fright at the noises incident to the ordinary operation of a train on its road.—Williams v. Chicago, B. & Q. Ry. Co., Neb., 110 N. W. Rep. 596.

117. RECEIVERS—Bankruptcy —The appointment of a receiver by the superior court of the state of Massachusetts, if in excess of the court's jurisdiction, is remediable only by appeal.—Beatty v. Anderson Coal Min. Co., U. S. C. C. of App., First Circuit, 150 Fed. Rep. 293.

118. RECEIVERS—Bill by General Creditors.—A receiver will not be appointed on a bill by general creditors of an insolvent company in order to stave off lien creditors; the bill not being one to foreclose nor compel liquidation.—Gutterson & Gould v. Lebanon Iron & Steel Co., U. S. C. C. of App., M. D. Pa., 150 Fed. Rep. 72.

119 RECEIVERS — Liability on Contracts.—Receivers held liable on contracts only in their official capacity to the extent of the property in their hands, which liability must be enforced in the receivership proceedings.—Stannard v. Robert H. Reid & Co., 103 N. Y. Supp. 521.

120. RELIGIOUS SOCIETIES—Gifts to Foreign Organization.—Under Const. W. Va. art. 6, § 47, a trust of 351 acres of land located in West Virginia, created for the benefit of a foreign religious corporation, held contrary to the public policy of the state of West Virginia, and therefore void.—Miller v. Ahrens, U. S. C. C., N. D. W. Va., 150 Fed. Rep. 644.

121. SALES — Contract.—Contract for sale of certain rails, etc., to remain the property of the seller until payment, held a conditional sale, though possession was delivered.—William W. Bierce v. Hutchins, U. S. S. C., 27 Sup. Ct. Rep. 524.

122. SALES—Replevin.—Seller held not entitled to recover in replevin from buyer under conditional sale without tendering return of property delivered in part payment of price.—American Soda Fountain Co. v. Dean Drug Co., Iowa, 110 N. W. Rep. 584.

123. SALES—Unconstitutional Statute.—The validity of an annexation ordinance adopted under an unconstitutional statute may be collaterally impeached in a proceeding to enforce a city tax levied against real estate in the annexed territory.—State v. Several Parcels of Land, Neb., 110 N. W. Rep. 601.

124. SET-OFF AND COUNTERCLAIM—Non-resident Plaintiff.—An unliquidated demand may be used as a set-off against a nonresident.—Abernathy & Pinegar v. Meyer-Bridges Coffee & Spice Co., Ky., 100 S. W. Rep. 862.

125. STREET RAILROADS—Injury to Pedestrian.—In an action for the death of one run over by a street car, the presumption is that decedent was in the exercise of due care, and looked and saw the car.—Powers v. St. Louis Transit Co., Mo., 100 S. W. Rep. 655.

126. STREET RAILROADS—Rules as to Transfers.—Regulation of city railroad company, requiring passenger to demand transfer at the time of paying fare, held reasonable and valid.—Ketchum v. New York City Ry. Co., 168 N. Y. Supp. 486.

127. STREET RAILROADS—Use of Streets by Abutting Owners.—Owners of property adjoining a street held not entitled to appropriate any portion of the street to their exclusive use in carrying on their business, though sufficient space was left for the use or passage of the public.—McHargue v. M. M. Newcomer & Co., Tenn., 100 S. W. Rep. 700.

128. TAXATION—Tax Sale.—A sale of real estate for state and county taxes passes no title, in the absence of proof of a levy of the county tax.—Woody v. Strong, Tex., 100 S. W. Rep. 801.

129. TAXATION—Taxing Foreign Policy Holders.—State taxation of credits arising out of loans made in regular course of business by local agent of foreign insurance company to policy holders held not forbidden by Const. U. S. Amend. 14.—Metropolitan Life Ins. Co. v. City of New Orleans, U. S. S. C., 27 Sup. Ct. Rep. 499.

130. TAXATION—Transfer Tax.—Where a husband gave certain stock to his wife, and the dividends were deposited at the time of his death in a bank to the credit of both, which deposit either or the survivor could draw, such money was not subject to the transfer tax.—*In re* Graves' Estate, 108 N. Y. Supp. 571.

131. TELEGRAPHS AND TELEPHONES—Delay in Delivery of Message.—A telegraph company held not entitled to excuse delay in delivering a death message because its commercial wire is out of business, where wires used for railroad business are open.—Buchanan v. Western Union Telegraph Co., Tex., 100 S. W. Rep. 974.

132. TELEGRAPHS AND TELEPHONES—Failure to Deliver Message.—Where the failure to deliver a telegram was not due to a mistake in the initial of the sendee, it was not error to refuse to instruct that the company was not obliged to attempt to deliver a message addressed to one of the same name except for the initials.—Arkansas & L. Ry. Co. v. Stroude, Ark., 100 S. W. Rep. 760.

133. TRADE MARKS AND TRADE NAMES—Infringement.—It is not a defense to a suit to enjoin infringement of a trade-mark that the defendant's business is confined to a single state, and that complainant, which is a foreign corporation as to such state, has not complied with its laws to qualify itself to do business therein.—Consolidated Ice Co. v. Hygeia Distilled Water Co., U. S. C. C. of App., Third Circuit, 150 Fed. Rep. 10.

134. TRADE MARKS AND TRADE NAMES—Infringement.—An infringement of trade-mark by the sale of cigars or another make from a box bearing plaintiff's registered trade-mark does not warrant the allowance of punitive damages.—Lampert v. Judge & Dolph Drug Co., Mo., 100 S. W. Rep. 359.

135. TRADE MARKS AND TRADE NAMES—Unfair Competition.—Though the word "keystone" may be a geographical term, yet its use by one manufacturer in his trade-name or on his products to pass them off as those of another may constitute unfair competition, and entitle the latter to an injunction.—Buzby v. Davis, U. S. C. C. of App., Eighth Circuit, 150 Fed. Rep. 275.

136. TREATIES—Extradition.—A later treaty will not be regarded as repealing an earlier statute by implication unless the two are absolutely incompatible, and the statute cannot be enforced without antagonizing the treaty.—Johnson v. Browne, U. S. S. C., 27 Sup. Ct. Rep. 539.

137. TRUSTS—Establishment of Resulting Trust.—In order to prove a resulting trust, it must be established by testimony so clear, strong, and unequivocal as to banish every reasonable doubt from the mind of the chancellor respecting the existence of such trust.—Smith v. Smith, Mo., 100 S. W. Rep. 579.

138. WATERS AND WATER COURSES—Irrigation.—Under Act April 4, 1887 (Laws 1887, pp. 311, 314), §§ 4, 6, creating water districts, held, that no lands in Mesa county are in water district No. 39, and hence the water commissioner of that district cannot claim compensation for services performed in Mesa county.—Fravert v. Board of Comrs. of Mesa County, Colo., 88 Pac. Rep. 873.

139. WATERS AND WATER COURSES—Pollution.—The discharge of waste from an oil mill and other offensive matter into a drainage ditch extending through the land of an adjoining owner, by which he was injured, held to constitute a private nuisance, giving a right of action for damages under Civ. Code Ga. 1895, § 3858.—Exley v. Southern Cotton Oil Co., U. S. C. C., S. D. Ga., 150 Fed. Rep. 101.

140. WATERS AND WATER COURSES—Public Water Supply.—A water company supplying water to a city held not liable to the owner of a building because of its destruction by fire because of an insufficient supply of water owing to the negligence of the water company.—Metz v. Cape Girardeau Water Works & Electric Light Co., Mo., 100 S. W. Rep. 651.

141. WEAPONS—Carrying Pistol.—Mere delay in the pursuit of a journey held insufficient to deprive one of the defense of being a traveler, in a prosecution for unlawfully carrying a pistol.—Irvin v. State, Tex., 100 S. W. Rep. 779.

142. WILLS—Clause in Will.—The word "and" will not be substituted for "or" in the clause in a will providing for disposition of testator's estate in case any of his sons should die "without leaving a wife or child," unless plainly required to give effect to the intention of the testator.—Travers v. Reinhardt, U. S. S. C., 27 Sup. Ct. Rep. 563.

143. WILLS—Estates in Fee Simple.—The rule that the words "heirs of the body" or "bodily heirs" create an estate convertible by Ky. St. 1903, § 2345, into a fee simple, held not to obtain where there is other language used in the will indicating that the words are used as words of purchase.—Adair v. Adair's Trustee, Ky., 99 S. W. Rep. 925.

144. WILLS—Rights of Residuary Legatee.—Where a testamentary trust for the benefit of a religious society was void, the property passed to testator's residuary legatee under Code W. Va. 1899, ch. 77, § 13 [Code 1906, § 3145].—Miller v. Ahrens, U. S. C. C., N. D. W. Va., 150 Fed. Rep. 644.

145. WILLS—Validity.—That following the signature to a will is written matter, will not invalidate the will, if such matter is not testamentary in character.—*In re* Beechman's Estate, Pa., 65 Atl. Rep. 799.

146. WITNESSES—Competency of Testimony.—Where the defendant in a murder trial testified that he had heard before the killing that decedent had clubbed an old man, causing his death, evidence held admissible to show that the old man had died of senility and alcoholism.—Knapp v. State, Ind., 79 N. E. Rep. 1076.

147. WITNESSES—Cross-Examination.—The trial court commits no error in refusing to permit a question to a witness on cross-examination which has no apparent relevancy to the issue.—Douglass v. State, Fla., 43 So. Rep. 424.

148. WITNESSES—Impeachment.—Where witness testified that a statement made to the county attorney and grand jury was made under threat of being sent to jail, and is not true, evidence of such statement is inadmissible.—Skeen v. State, Tex., 100 S. W. Rep. 770.

149. WITNESSES—Redirect Examination.—It was error to allow expert witnesses on redirect examination to testify regarding the sale of property concerning which they had not been interrogated on cross-examination.—*In re* Blackwell's Island Bridge in City of New York, 108 N. Y. Supp. 441.

150. WORK AND LABOR—Quantum Meruit.—Where the minds of the parties never met with reference to the compensation to be paid plaintiff for a copy of certain testimony, plaintiff was entitled to recover therefor on a *quantum meruit*.—Hall v. Luckman, Iowa, 110 N. W. Rep. 916.